IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1074 of 1987

with

SPECIAL CIVIL APPLICATION No 5364 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTABEN RATILAL MAHAVANSHI

Versus

ADMINISTRATIVE OFFICER

Appearance:

1. Special Civil Application No. 1074 of 1987
   MR SM MAZGAONKAR for Petitioners No. 1-16
   MR MC SHAH for Respondents No. 1-2
   MS SHRADDHA TRIVEDI, AGP for Respondents No. 3-4
2. Special Civil Application No. 5364 of 1998
   MR MC SHAH for Petitioner No. 1
   MR SM MAZGAONKAR for Respondents No.1 to 11
   MS SHRADDHA TRIVEDI, AGP for Respondent No. 12 & 13

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. Shantaben Ratilal Mahyavanshi and others, petitioners have filed this petition for writ of mandamus or any other appropriate writ, order or direction directing the Administrative Officer, Nagar Prathamik Shikshan Samiti, Navsari - respondent No.1, Chief Officer, Navsari Nagarpalika, Navsari - respondent No.2, the Secretary Education Department - respondent No.3 and the Director of Primary Education - respondent No.4 to admit the petitioners to the General Provident Fund Scheme, to admit them to the Pension Scheme and to grant them all other benefits admissible to a regular full time employee of the Nagar Prathamik Shikshan Samiti such as pay scales as may be revised from time to time grant of Leave Travel Concession in this behalf. Originally this petition was filed somewhere in 1987.

2. The facts giving rise to this petition are as under:

2.1 The petitioners are at the relevant time were working as Peons/Tedagars in the schools run by Nagar Prathamik Shikshan Samiti, Navsari Nagarpalika (hereinafter referred to as `the said Samiti') on fixed pay scale of Rs.100/- from the dates mentioned in the statement annexed at Annexure `A' to the petition.

2.2 From June 1983 the petitioners were paid regular pay scale of Rs.196-3-232 admissible to full time Class IV employees by the communication dated 16/17-6-1983 issued by the Administrative Officer of the said Samiti retrospectively w.e.f. 1.4.1979 or from the date of their appointment. The petitioners stated that originally the Government passed the resolution dated 11.2.1970 in which it was decided that no new post were to be filled up for Class IV employees in Primary School and if any Class IV post is filled up after 11.7.1970 the Government would not give any grant towards salary paid to the employee appointed after the date. It was further stated that the expenditure incurred is as per the Primary Education Act, Bombay Primary Education Act, 1947 and Bombay Primary Education Rules 1949.

2.3 Thereafter the Government passed the resolution dated 22.3.1979 in which it was decided that though originally Class IV employees post were existing which after retirement the said post were abolished. However

thereafter the Government again decided that no other posts like peon in the Panchayat if there are vacant post by retirement, resignation or death, a new posts are to be created in the scale of Rs.196-232 to be given by the Government.

2.4 Thereafter again the Government passed the resolution dated 24.10.1981 and decided that peons in primary schools which were appointed the same benefits to be given to Nagar Prathamik Samiti particularly in the area of Palanpur, Ankleshwar, Nadiad and Navsari. This resolution specifically stated that about 15 tedagars/ peons were appointed and all these posts are deemed to be continued as per the resolution dated 1.4.1979 and the Nagar Prathamik Samiti were entitled for Government grant in this behalf.

2.5 Thereafter the Government passed an order dated 16.6.83 a communication by Director of Education to Navsari in which it was stated that Prathamik Shikshan Samiti also passed an order and decided to pay requisite emoluments of 15 days in the scale of Rs.196-232.

2.6 The petitioners thereafter addressed a letter dated 8.2.85 to the Director, Primary Education Department to give benefits of provident fund in this behalf.

2.7 The Director of Primary Education Department by his communication dated 5.1.86 addressed to the said Samiti that all these peons were entitled for provident fund by resolution dated 22.3.85.

3. When the matter was placed for hearing before this Court, this Court admitted the matter on 14.10.88 but refused the interim relief. In response to the said order, on behalf of the respondent No.3 one Shri N.O.Sadhu, Under Secretary to the Govt. of Gujarat, Education Department has filed affidavit on 25th June, 1992. In the said affidavit it has been stated that the respondent No.3 had framed the policy with regard to, not giving grant to any Class IV employee appointed in any Primary School under letter dated 11.11.1990 in pursuance of Government letter dated 21.1.1970.

4. When the matter was placed for hearing before this Court, this Court (Coram: S.K.Keshote, J.) on 19.11.1997 pleased to pass the following order:

"Having heard the learned counsel for the parties, I am prima-facie satisfied that the

averments made in the reply affidavit on behalf of the respondent No.3 by the deponent thereof Shri N.O.Sadhu, Under Secretary to the Government of Gujarat, Education Department, are not correct.

Shri N.O.Sadhu, Under Secretary to the Government of Gujarat, Education Department is directed to personally remain present in the Court on 26th November, 1997.

5. It appears that thereafter Shri N.O.Sadhu remained present before this Court on 9th December, 1997, and on 9.12.1997 this Court (Coram: S.K.Keshote, J.) in para 1 and 2 pleased to pass following order:

"The learned counsel for respondent No.3 made a statement before this Court that the grievance made by petitioners in this Special Civil Application have been taken up by respondent No.3 for consideration thereof on merits and appropriate decision shall be taken within a reasonable time. In view of the aforesaid statement, the learned counsel for petitioners submitted that he has no objection in case the grievance of the petitioners are being taken up for decision by respondent No.3, but this Court may give a time bound programme so that the matter which has already been delayed so much may not be further delayed.

In view of the facts aforesaid, the respondent No.3 is directed to consider and decide the grievance made by petitioners in this Special Civil Application within a period of three months from the date of receipt of writ of this order. In case the grievance of the petitioners made in this Special Civil Application are accepted by respondent No.3, then they shall be entitled for all consequential benefits following therefrom and the same shall be given to them within two months next. However, in case the grievance of the petitioners are not acceptable, then the respondent No.3 may pass a reasoned order and a copy of the same may be sent to the petitioners by registered post A.D. Liberty is granted to the petitioners for revival of this Special Civil Application in case of difficulty."

6. It appears that thereafter pursuant to the

aforesaid order of this Court, the Director of Primary Education (not respondent No.3) heard the petitioner and passed the reasoned order dated 30.3.98 denying the benefit to the petitioners.

7. Being aggrieved and dissatisfied with the impugned order dated 30.3.1998 passed by the Director of Primary Education, the petitioner has amended the petition and has challenged the aforesaid action of the Government in this behalf.

8. Mr.Mazgaonkar, learned advocate for the petitioners submitted that pursuant to the directions contained in Government Resolution dated 24.10.1981 the petitioners were given regular pay-scale of Rs.196-232 retrospectively w.e.f. 1.4.1979 or from the date of their appointment whichever was later. The pay scale of the petitioners were also revised to Rs.750-940 w.e.f. 5.2.1985 pursuant to the revision of pay scale as per the recommendations of 4th Pay Commission Central Pay Commission accepted by the State Government.

8.1 He further submitted that however the petitioners were not granted the consequential benefits of regularisation, such as General Provident Fund benefit, Pension Scheme and Leave Travel Concession as were applicable to other Non-Teaching Staff of the Municipal School Board.

8.2 It was further submitted that the petitioners had made a representation for the above benefits vide communication dated 8.12.1985 (Annexure `E' to the petition), to the Nagar Prathamik Shikshan Samiti by its Resolution No.67 dated 27.12.1985 resolved to make a proposal for including the petitioners in the pension scheme and to send it to Government (for sanction) after obtaining the approval of the Nagar Palika and until then to include the petitioners in the Contributory Provident Fund Scheme. The resolution of the Nagar Prathamik Shikshan Samiti has been annexed at Annexure `L' to the petition. The Resolution of the School Board was duly approved by the Nagar Palika vide its Resolution dated 4.3.1986. The proposal was forwarded to Government vide School Board's letter dated 23.4.1986.

8.3 It was further submitted that the petitioners had also demanded the benefit of LTC in respect of which the Nagar Prathamik Shikshan Samiti passed a Resolution No.116 dated 22.3.1985 to make a proposal in that behalf to the Government after obtaining approval of the Nagar Palika which has been annexed at Annexure `P' to the

petition. The proposal was approved by the Nagarpalika vide its resolution No.1568 dated 26.6.85 and it was also forwarded to Government vide Annexure `Q' to the petition.

8.4 He further submitted that as is clear from the order 9.12.97 passed by this Court a statement made on behalf of the learned advocate for the respondent No.3 that the grievances raised by the petitioners in the petition had been taken up by respondent No.3 for consideration thereof on merits and appropriate decision shall be taken within a reasonable time. It is further clear from the order passed by this Court that, in view of the aforesaid statement made on behalf of Government respondent No.3, the advocate for the petitioners submitted that he had no objection in case the grievances of the petitioners are being taken up for decision by respondent No.3, but this Court may give a time bound programme so that the matter which had already been delayed so much may not be further delayed. It is thus clear that consent to withdraw the petition was given in view of the assurance that respondent No.3 was itself to consider the grievances of the petitioners. Having stated this development, this Court further specifically directed respondent No.3 i.e. the Government in the Education Department to consider and decide the grievances made by the petitioners within a period of three months etc. and further directed respondent No.3 to pass reasoned order and to send a copy thereof to the petitioners.

8.5 Learned advocate for the petitioners further submitted that in these circumstances giving of hearing to the petitioners by Director of Primary Education under instructions of the Government in the Education Department is no decision by respondent No.3 and virtually is a fraud played upon this Court as well as the petitioners and the decision taken by the Government by delegating its function to a subordinate officer is no decision at all and is required to be quashed and set aside.

8.6 He further submitted that the order of the Director of Primary Education does not any whisper why he decides the matter inspite of the order of this Court in this behalf. So no reasons have been given in this behalf.

8.7 He further submitted that in the impugned order the Director of Education has stated nothing new than the stand taken by Government in their affidavit in reply

already filed in the petition, viz. that because by communication dated 21.1.1970 Government had given instructions to the concerned authorities not to fill in any Class IV posts after 11.7.1970 and told them that the Government would not give any grant towards salary paid to the employees appointed after the said date. Since the petitioners were recruited after the said cut off date, it was stated by the deponent of Government affidavit that they were not entitled to the benefits claimed by them. The self same stand is taken by the Director of Primary Education in his order dated 30.3.1998 for refusing to grant the claim made by the petitioners.

8.8 It has been further submitted that if this was the position there was no reason for respondent No.3 to make a statement before this Court as was done by Government Advocate. Though respondent No.3 has not produced a copy of those instructions dated 21.1.1970 along with their affidavit in reply dated 26.6.1992 nor the Director of Primary Education has annexed the same to his decision, it is clear that by Resolution dated 24.10.1981 Government has sanctioned regular pay scales inter alia for 15 Tedagars/Peons working on fixed pay in Navsari Nagar Prathamik Shikshan Samiti. Since this is done by a Resolution issued "by the Order and in the name of the Governor of Gujarat", the instructions, if any, purported to have been issued under letter No.PRE-177-6245-K dated 21.1.1970 are deemed to have been superseded or waived so far as the aforesaid 15 Tedagar-Peons working under Nagar Prathamik Shikshan Samiti, Navsari are concerned. In view of this position, the decision given by the Director of Primary Education dated 30.3.1998 deserves to be quashed and set aside by this Court as being violative of the fundamental rights of equality guaranteed to the petitioners under Articles 14 and 16 of the Constitution of India.

9. Learned advocate for the petitioner submitted that subsequently Government issued a Resolution dated 24.11.1988 introducing pension scheme to the non-teaching staff of the various authorised Municipal School Boards in Gujarat who were not covered under Pension Scheme. the said resolution is produced by the petitioners at page 50 and covers the non-teaching staff covered by the Contributory Provident Fund Scheme as well as those who are not covered under the Provident Fund Scheme. The said resolution makes the necessary provision for release of proportionate grant to the school Board for this purpose. The petitioners claim the benefits under this resolution which the government has denied only on the

ground that the petitioners were appointed by the School Board contrary to the instructions of the Government contained in their communication dated 21.1.70 which is not justifiable in view of Government's own resolution dated 24.10.81 as observed by this Court in the order dated 19.11.97.

9.1 The petitioners further submitted that for the purpose of getting the benefit of pension scheme introduced by the aforesaid resolution dated 24.11.1988 they are required to be members of the C.P.F. Scheme. The petitioners prayed that for the reasons mentioned earlier this Court may be pleased to direct the respondents to treat the petitioners as covered by the C.P.F.Scheme with effect from the date they were entitled to be covered by the said scheme, i.e. with effect from the date they were granted regular pay scale i.e. 1.4.1979, or alternatively, the respondents may be directed to treat the petitioners as covered by the C.P.F. Scheme from 22.3.1985, that being the date on which the School Board resolved to give to the petitioners the benefit of C.P.F. Scheme (though the said Resolution was not implemented) and, on that basis, to give to the petitioners the benefit of pension scheme as contemplated by the aforesaid Resolution dated 24.11.1988 within the time frame which may be laid down by this Court.

9.2 Learned advocate for the petitioners further submitted that so far as contribution by the petitioners to the C.P.F. Scheme is concerned, those petitioners who are in service may be directed to deposit their contribution to the Provident Fund with the school board in a lump sum as may be calculated by the School Board (i.e. Prathamik Shikshan Samiti), on the lines shown by them in their affidavit dated October 1997 and the respondents may be directed to make the matching contribution to the same as employer, which portion they may be treated as pension contribution for the service rendered by the petitioners under the Provident Fund Scheme (vide Rule 3 of the Rules annexed to G.R. dated 24.11.1988).

9.3 It was further submitted that so far as those petitioners who have retired during the pendency of the petition (petitioner No.1), and those who have died in harness and whose legal heirs are brought on record, their contribution to the C.P.F. will have to be calculated only notionally till the date of their retirement/death, as even if they had paid the same, they/their legal heirs would have been repaid their part

of the contribution upon their retirement/death. The matching contribution which the respondents would have made to their C.P.F. account has actually remained with the respondents. Such matching contribution may be calculated and treated as pension contribution for the services rendered by such employees under the Provident Fund Scheme.

9.4 It was further prayed by the petitioners for the grant of arrears of LTC benefits as resolved by the Prathamik Shikshan Samiti vide Resolution dated 22.3.1985 and approved by the Navsari Municipality vide their resolution dated 26.6.1986 (vide Annex. P page 47). It was further prayed that once the impugned order of the Director of Primary Education dated 30.3.1998 is quashed and set aside by this Court, the petitioners would also be entitled to the said benefit which may please be directed to be given to them within the time frame which may be laid down this Court.

9.5 The petitioners have also pointed out that during the pendency of the petition, the petitioner No.1 has retired and petitioners No.2 and 4 have died and their legal heirs are brought on record. The petitioner No.10 has also died but whereabouts of his legal heirs are not known and they are not brought on record. Hence the petition abates so far as the petitioner No.10 is concerned. Petitioner No.15 has been dismissed from service and hence nothing he would be entitled to any benefit as claimed in the present petition.

10. He submitted that the Director of Primary Education has erred in misinterpreting the Government Letter dated 21.1.1970 under which it is stated that no new posts of Class IV employees are permitted to be opened in schools. He further submitted that the Director of Primary Education ought to have seen that no new post was opened by the petitioners. He submitted that respondents No.1 to 11 in this petition namely all the petitioners in earlier petition were given regular pay scale by virtue of the order passed by the State Government and they were absorbed in services in pursuance of the direction and/or permission given by the State Government. He has further submitted that it is not open to the State Government to say that they would not be entitled to the benefits available to other employees of the first petitioner on the ground that their appointments were made after 11.1.1970 or after the letter dated 21.1.1970 under which a prohibition against opening new posts have been imposed.

10.1 Mr.M.C.Shah, learned advocate submitted that the Administrative Officer, Nagar Prathmik Shikshan Samiti petitioner has filed this petition challenging the order dated 30.3.98 passed by the Director of Education, Gandhinagar by which prayed for quashing and setting aside the said order and also prayed that respondents No.12 and 13 in the said petition namely State of Gujarat and Director of Primary Education be directed to pay the admissible grant for the pay and other allowances and pensionary benefits and LTC benefit to respondents No.1 to 11 and other similarly situated employees of the petitioners.

10.2 The learned counsel appearing for the petitioner-Nagar Prathmik Shikshan Samiti, Navsari, in Special Civil Application No.5364/98 first relied upon the judgment of the Hon'ble Supreme Court in the case of Miss.Mohini Jain Vs. State of Karnataka and others reported in AIR 1992 SC 1858 where in Para 9 the Hon'ble Supreme Court has observed as under:

> "The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Art.41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate."

10.3 The learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of K.Krishnamacharyulu and others Vs. Sri Venkateswara Hindu College of Engineering and another reported in (1997) 3 SCC 571 where the Hon'ble Supreme Court in para 4 has observed as under:

> "It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on a par with the government employees. The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the writ petition under Article 226 of

the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on a par with the government employees. Since the appellants are insisting upon enforcement of their right though the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on a par with government employees under Article 39(d) of the Constitution."

10.4 The learned counsel has also relied upon the judgment of this Court in Special Civil Application No.1356 of 2001 with Special Civil Application No.1357 of

2001 in the case decided by this Court (Coram: P.B.Majmudar, J.) on 31.7.2001 wherein after relying upon the judgment of the Hon'ble Apex Court in the case of K.Krishnamacharyulu and others (supra), My learned Brother P.B.Majmudar, J. has observed on page 7 & 8 of his order as under:

"Teaching is the noblest of all avocations and hence, teachers, who shape the future of our children, need a better treatment. In our country, which is governed by Rule of law, our children, who are the future of this country, need cent percent education and literacy and opportunity to come up in life, and, therefore, the full strength of teachers are required to be appointed, not the 80%, as propounded by the Government.

On the ground of economy, quality education is denied to the children due to non-availability of adequate number of teachers and the same can be termed as human rights violation of these school children.

Education is of basic importance. There is nothing which is of greater importance than education. The amount spent on education is nothing but an investment for the future of the country. Unless we can raise the educational standards, we can never advance as a Nation. Therefore, education should be given priority.

The specious plea of economy on the part of the Government in the impugned action shows the lack of enthusiasm on its part in the field of education.

In this unsavoury episode, the silent suffering spectators are the school children of impressionable age, who are not even represented before this Court either by their parents or some well-meaning non-governmental organisations who are prepared to espouse their cause. Even, there is violation of Article 21 of the Constitution of India, in as much as, the hapless school children studying in these schools are not imparted education with sufficient strength of teachers. It is needless to reiterate that right to life enshrined in Article 21 means something more than survival or nominal existence. It would include all those aspects of life which go to make a

man's life meaningful, complete and worth living."

10.5 The learned counsel has also relied upon Rule 124 of Expenditure on Primary Education, 1951 which reads as under:

"Rule 124. Expenditure on (i) Class IV servants in primary schools appointed prior to the transfer of control as well as those appointed in vacancies in appointments sanctioned prior to the transfer of control and (ii) also the class IV servants appointed with the express sanction of Government after the transfer of control will be admitted for Government grant. The term class IV servants includes Kamathis, Call-women, Tedagars, Taluka peons etc."

11. On behalf of the Government, Ms.Shraddha Trivedi, learned AGP appeared and has filed affidavit of one Shri A.A.Nagori, Additional Secretary, Education Department, State of Gujarat of dated 27.9.2001. In that affidavit also the Government has relied upon the Resolution dated 11.2.1970.

11.1 It may be noted that earlier also the Government filed affidavit on behalf of respondent No.3 of Mr.N.O.Sadhu, Under Secretary, Govt.of Gujarat, Education Department of dated 25.6.1992 in which he has relied upon the Resolution of 1970 where this Court has deprecated the said affidavit. Still in the present petition also the Government has relied upon the resolution dated 11.2.1970 (which has been wrongly shown original resolution dated 11.1.1970). Learned counsel for the Government has also relied upon the judgment of the Hon'ble Apex Court in Civil Appeal No.7091 of 1995 decided on 4th August, 1995, where the Hon'ble Apex Court has relied upon certain rules and also affidavit of the Government and in last para of the order the Hon'ble Apex Court has observed as under:

"It would thus be clear that they being not only as a matter of rule and also practice, no money is being paid by way of grant-in-aid or otherwise to any school either maintained by the Municipality or any statutory body. The administrative work is being got done by the appropriate persons including teachers even in Government Primary Schools as averred in the additional affidavit. We are of the opinion that

the High Court was, therefore, not right in holding that there is a discrimination in denying the payment of grant-in-aid to the respondents for the non-teaching staff. The appeals are accordingly allowed. No costs."

11.2 Learned counsel for the Government has also relied upon Rule 145 of the Bombay Primary Education Rules, 1949, which reads as under:

"Rule 145. Government grant to Authorised Municipalities:- (1) No grant shall be paid on any expenditure incurred by an Authorised Municipality in connection with primary education unless such expenditure has been sanctioned and held admissible for the purpose of grant by Government: Provided that expenditure incurred on non-recurring items of office equipment not exceeding Rs.2,000 per annum in the aggregate shall be held admissible for grant if such expenditure has been previously sanctioned by the Director of Education and held admissible by him for the purpose of grant."

11.3 Learned counsel for the Government has also relied upon Sec.60 of the Bombay Primary Education Act which provides board delegation. Though sec.60 provides for delegation however the order dated 30.3.98 which has been passed does not show anything about the delegation in this behalf. Therefore reliance of sec.60 of the said Act has been clearly misplaced by the Government in this behalf.

CONCLUSION :

12. I have considered the rival submissions of the learned advocates for the petitioner as well as of the respondents. In my view, looking to the contentions raised by the petitioners and the averments made and the record produced, the order dated 30.3.1998 when the Government is relied only on the resolution of 1970 and no other subsequent resolution has been referred, the said order requires to be quashed and set aside. In my view after 1970 the Government has passed the resolutions dated 22nd March, 1979, 24th October, 1981 and also communication dated 16th June, 1983, and on the basis of the same some of the petitioners have worked also in the school. As I have already referred to the judgment of the Hon'ble Apex Court in the case of Miss.Mohini Jain (supra), in the case of K.Krishnamacharyulu (supra) and also the judgment of this Court. In view of the judgment

of the Hon'ble Supreme Court in the case of Miss.Mohini Jain (supra) which is binding on me the State is under a constitutional mandate to create conditions in which the fundamental rights guaranted to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality, the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. In view of the said judgment and also judgment of this Court in the case of Sonalben Vasudev Prasad Jani Vs. Municipal Girls High School decided by this Court (Coram: P.B.Majmudar, J.) in SCA No.1356 of 2001 on 31.7.2001 wherein my Brother Justice P.B.Majmudar has observed that the education is of basic importance, there is nothing which is of greater importance than education, the amount spent on education is nothing but an investment for the future of the country unless we can raise the educational standards, we can never advance as a nation therefore education should be given priority. That decision is binding on me and I fully reiterate the said principle in this behalf.

12.1 In my view, the State should not take an unreasonable stand and relied upon only on the resolution of 1970. In fact the resolution of 1970 in respect of that the State agreed this and thereafter this Court already directed and the Government passed fresh order and said order is vitiated and bad in law on the ground that the Government has taken irrelevant consideration of resolution of 1970 did not refer to the subsequent resolution which has been passed by the Government. There is no plausible explanation given by the Director of Education that as to why those resolutions are not applicable in this behalf. Moreover specific directions were also given to the Government to consider the case of the petitioners eventhough the Director of Primary Education has not considered this aspect in this behalf. In view of the same the order is required to be quashed and set aside. I accept the contentions raised by Mr.Mazgaonkar and I do not accept any of the contentions raised by the Government in this behalf.

13. In view of the discussions made hereinabove, this petition as well as the petition filed by the Administrative Officer, Nagar Prathamik Shikshan Samiti, Navsari, are allowed. Rule made absolute. No order as to costs.

(K.M. Mehta, J.)

syed/